IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.A.ABDUL GAFOOR
&
THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 4TH DECEMBER 2006 / 13TH AGRAHAYANA 1928

WA.No. 1374 of 2006(C)

AGAINST THE JUDGEMENT/ORDER IN WPC.8683/2005 Dated 13/06/2006
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APPELLANT: PETITIONER:

T. RAJU,
EXCISE INSPECTOR, EXCISE RANGE OFFICE,
AGALI, PALAKKAD.

BY ADV. SRI.N.SUGATHAN

RESPONDENTS: RESPONDENTS:
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1. STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
TAXES DEPARTMENT, SECRETARIAT,THIRUVANANTHAPURAM.

2. COMMISSIONER OF EXCISE,
THIRUVANANTHAPURAM.

3. KERALA PUBLIC SERVICE COMMISSION,
REPRESENTED BY ITS SECRETARY, PATTOM,
THIRUVANANTHAPURAM.

4. U. GOVINDA NAIK,
EXCISE INSPECTOR, EXCISE RANGE OFFICE,
HOSDURG, KASARAGOD DISTRICT.

5. N.K. MOHANAKUMAR,
EXCISE INSPECTOR, EXCISE DIVISION OFFICE,KOLLAM.

BY ADV. SRI.P.C.SASIDHARAN, SC, KPSC
SRI. SANDESH RAJA, GOVERNMENT PLEADER

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD
ON 04/12/2006, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

K.A. ABDUL GAFOOR & K.R. UDAYABHANU, JJ

W.A. No. 1374 OF 2006 C

Dated this the 4th day of December, 2006

JUDGMENT

Abdul Gafoor,J

Based on the judgment in Ext.P1 and P2, the petitioner was found to be entitled to get advice for direct recruitment as Excise Inspector borne on the Excise and Prohibited Services. He therefore claimed for inclusion in Ext.P1 seniority list for the period from 02.02.1993 to 30.06.2004 immediately after rank No. 286 therein. The original petition was dismissed. Therefore, this writ appeal reagitating the case before us. Few facts are necessary for deciding the issue.

2. The Public Service Commission issued a notification for direct recruitment to the post of Excise Inspector. After the due process of selection, the rank list was dated 12.06.1992. The appellant was included as No. 86 therein. Total 83 candidates were advised from that list, up to 17.11.1996. But the appellant was not advised. According to him he ought have been included

as one among the said 83 candidates as he belongs to Ezhava community and was entitled to the rotation against the 42nd turn, meant for an ezhava candidate. He was excluded from the advice list as the first advise list of 23 candidates was prepared by the Public Service Commission on a wrong basis. The Public Service Commission worked out the turn of candidates for 5 vacancies reported prior to publication of the list on 12.06.1992 and the next 18 vacancies reported after the publication of the list, separately. This was incorrect according to the appellant. By reason of this incorrect method adopted by the Public Service Commission, Rank No. 7 in the list, who ought to have been advised against the open merit vacancy, was happened to be advised as against the Ezhava reservation vacancy. Had he been accommodated against the open vacancy, the appellant ought to have been advised as No. 42 among the 83 candidates advised . So he filed an original petition which resulted in Ext.P1 judgment. It is made clear in paragraph 15 of that judgment that he shall be included "in the appropriate Ezhava turn against the next advisable vacancy for the post of Excise Inspector". It was also directed that "the seniority and services conditions of 83

candidates already advised and appointed shall not, however, be disturbed". Thus in effect this court by Ext.P1 judgment, accepted the case of the petitioner and directed to accommodate him without disturbing the candidates already advised towards the 83 vacancies reported earlier. Though an appeal was attempted by the PSC, Ext.P2 judgment of the Division Bench reveals that it was unsuccessful. Finally PSC had to advise the petitioner and advice was made as per Ext.P3. This resulted in consequent appointment as per Ext.P4. The appellant joined duty. It was while so, Ext.P5 seniority list for the period from 02.02.93 to 30.6.2001 was published. Number 286 is the last among the candidates advised in the year 1992 for the list . Necessarily going by the contents of Ext.P1 the appellant shall get the next vacancy to be included in Ext.P5. That was the case of the appellant.

3. The learned single judge found that the appellant did not choose to challenge Ext.P3 advise memo and P4 appointment letter in time. Therefore, there was nothing illegal in the seniority list to prepone Rule 27(c) which was followed. We are unable to sustain the view, because he was not liable to

challenge Ext.P3 or P4. Ext. P3 is the advise memo he obtained and Ext.P4 is the appointment letter. These were issued based on Ext.P1 judgment.

4. Going by the direction of Ext.P1 as confirmed in Ext.P2 he had to be given next available after the candidates advised in the year 1992. Rank 286 in Ext.P5 seniority list is the last among the said candidates. The next advisable vacancy has to be computed following the special rules for Excise Provision Subordinate Services . The special rules provides that direct recruitment shall be to fill up every 4th vacancy. Therefore, the next three candidates after rank No.286 in Ext.P5 shall be promottees and Rank No. 290 shall have to be given to a direct recruitment. The appellant shall have to be placed in that slot.

5. Due publication had been made in the news papers about the pendency of the Original Petition impleading an affected person in a representative character. No body appeared and contested. In this appeal also Respondent No.5 had been duly served and notice to respondent No.4 was not returned and no acknowledgment was also returned back. A petition under

proviso to section 51(2) of Kerala High Court Rules had been filed as I.A. No. 764/2006, after a lapse of 30 days from the date of despatch of notice to the 4th respondent on 17.10.2006. Therefore, the declaration of service of Respondent No.4 is duly made.

Thus, we are of the view that the judgment of the learned single judge is liable to be set aside for the reason mentioned already and the appellant is entitled to be included as Rank 290 in Ext.P5. It is directed so. Writ Appeal is allowed, setting aside the impugned original petition Exts. P7 and P10. He shall also be entitled to consequential benefits.

K.A. ABDUL GAFOOR, JUDGE

K.R. UDAYABHANU, JUDGE.

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